

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

J & J SPORTS PRODUCTIONS, INC.,)	
)	
)	
Plaintiff,)	
)	
v.)	No. 4:14-cv-02000-NCC
)	
RAMADAL, INC. d/b/a EL COCO LOCO,)	
and APOLONIO RAMON GARCIA,)	
)	
Defendants.)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on Defendant Apolonio Ramon Garcia’s (“Garcia”) Motion to Set Aside Final Judgment (Doc. 22). Plaintiff filed a response to the Motion (Doc. 28) and concurrently filed a Motion for Leave to File First Amended Petition (Doc. 29). For the following reasons, Garcia’s Motion (Doc. 22) will be **GRANTED** and Plaintiff’s Motion (Doc. 29) will be **GRANTED, in part**.

On December 3, 2014, Plaintiff J & J Sports Productions, Inc. filed a Complaint against Ramadal, Inc. d/b/a El Coco Loco, Rafael Garcia-Gomez, and Garcia for violations of 47 U.S.C. §§ 605 et seq. (Count 1) and 47 U.S.C. §§ 553 et seq. (Count 2), and for conversion (Count 3) arising from the interception, receipt, and exhibition of the December 8, 2012 “Manny Pacquiao v. Jaun Manuel Marquez, IV, Welterweight Fight Program” telecast (Doc. 1).

Garcia was served with a copy of the Summons and Complaint on February 11, 2015 (Doc. 12). Defendant Ramadal, Inc. d/b/a El Coco Loco was served with a copy of the Summons and Complaint on March 3, 2015 (Doc. 14). The Court dismissed Defendant Rafael Garcia-Gomez without prejudice on April 23, 2015, because Plaintiff failed to serve him

pursuant to Federal Rule of Civil Procedure 4(m) (Doc. 16). On April 29, 2015, the Clerk of Court granted Plaintiff's Motion for Entry of Clerk's Default against Defendants Ramadal, Inc. d/b/a El Coco Loco and Garcia (Doc. 17) and, on July 20, 2015, the Court granted Plaintiff's Motion for Default Judgment and entered Default Judgment against these Defendants (Doc. 20).

On June 19, 2016, Garcia filed the current Motion to Set Aside Final Judgment (Doc. 22). Garcia asserts that, in its Complaint, Plaintiff has failed to make any allegations that identify Garcia or any allegations that could establish Garcia's role in exhibiting the alleged illegal content or making such content available for exhibit (*Id.* at 2). Therefore, Garcia argues that there was an insufficient basis to enter Judgment against Garcia (*Id.* at 3). Garcia also asserts that he has never had an ownership interest in Ramadal, Inc. d/b/a El Coco Loco (*Id.*). In support of his assertion, Garcia attaches the 2010 Ramadal, Inc. Articles of Incorporation (Doc. 22-1), the 2010 Ramadal, Inc. Annual Registration Report (Doc. 22-2), and the 2012 Ramadal, Inc. Annual Registration Report (Doc. 22-3). Garcia further argues that he has no recollection of being served with the Complaint or Summons and, even if he had been served, Garcia does not comprehend or read the English language and therefore would not have understood the significance of any document that he may have received in this matter (Doc. 22 at 4).

In its response, Plaintiff concedes that the Court did not have a sufficient factual basis in which to enter a Default Judgment because Plaintiff inadvertently left off the names of the two individual Defendants and listed only Ramadal, Inc. as an owner, and/or operator, licensee, permittee, or person in charge or individual dominion, oversight or management of the commercial establishment, doing business as El Coco Loco (Doc. 28 at 3). Plaintiff also contemporaneously filed a Motion for Leave to File First Amended Petition (Doc. 29). Therefore, Plaintiff requests the Court set aside the Judgment against Garcia and grant Plaintiff's

Motion for Leave to File First Amended Petition (Doc. 28 at 3).

Accordingly,

IT IS HEREBY ORDERED that Defendant Apolonio Ramon Garcia's Motion to Set Aside Final Judgment (Doc. 22) is **GRANTED**. The Default Judgment (Doc. 20) shall be set aside as to Defendant Apolonio Ramon Garcia only and the above-captioned case shall be **REOPENED**.

IT IS FURTHER ORDERED that Plaintiff J & J Sports Productions, Inc.'s Motion for Leave to File First Amended Petition (Doc. 29) is **GRANTED, in part**. Plaintiff shall file an amended complaint addressing Defendant Apolonio Ramon Garcia only within seven (7) days of the date of this Order.

Dated this 10th day of November, 2016.

A handwritten signature in black ink, appearing to read "Henry Edward Richey", is written over a horizontal line.

UNITED STATES DISTRICT JUDGE